IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

AMIR H. SANJARI, Plaintiff	)	
v.	)	Cause No. 3:07-cv-00423-TLS
ALISON GRATZOL, Defendant	)	
In Rem	)	CONSIDERATION BY U.S. DISTRICT JUDGE REQUESTED

VERIFIED MOTION TO EXPEDITIOUSLY RECONSIDER, ALTER AND AMEND JUDGMENT

The undersigned Plaintiff, Amir H. Sanjari ("Sanjari"), *self-represented*, *in propria persona*, in the above-captioned action against Defendant Alison Gratzol ("Gratzol") is hereby, and pursuant to the Constitution for the United States ("the Constitution"), **F. R. Civ. P. 6(a)** and **59 (e)** and other relevant federal statutes, filing the instant timely motion to the instant US District Court ("USDC") in Northern Indiana to reconsider, alter and amend its judgment (the "judgment") of 10.17.2007, **Exhibit # 1**, in the instant action, requesting that the instant USDC expeditiously:

A- reconsider and reverse its judgment of 10.17.2007, regarding the Plaintiff's Complaint (hereinafter "**PC**") of 09.10.2007, and similarly proceed with discovery and trial in the instant matter with a view to providing injunctive relief adjudging and declaring the instant *in rem* order null and *void*,

B- reconsider and reverse its judgment of 10.17.2007, regarding the Plaintiff's

motion of 09.10.2007, to proceed In Forma Pauperis,

C- vacate the referral of the instant case to US Magistrate completely,

D- grant all other relief deemed just and proper in the premises.

In support, the Plaintiff submits his Affidavit attached herein and all other papers submitted hitherto in this action.

I affirm under the pains and penalties for perjury that I am aware of the contents herein and that the above and foregoing representations are true to the best of my knowledge.

Respectfully Submitted,

Dated: October 26, 2007

Amir H. Sanjari
self-represented, in propria persona

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v.	)	Cause No. 3:07-cv-00423-TLS
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In Rem	)	CONSIDERATION BY U.S. DISTRICT JUDGE REQUESTED

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S VERIFIED MOTION TO EXPEDITIOUSLY RECONSIDER, ALTER AND AMEND JUDGMENT

The undersigned, Amir H. Sanjari ("Sanjari"), *self-represented*, *in propria persona*, is the Plaintiff in the instant federal question (and diversity) *in rem* action seeking declaratory and injunctive relief declaring the said *in rem* state order *void ab initio.*

In support, Sanjari states as follows:

1. On 09.10.2007 Sanjari filed the instant *in rem* action, comprising his **PC** and verified IFP motion, in the instant USDC. The **PC** was filed pursuant to **federal questions 28 U.S.C. § 1331** (including Due Process violations, Equal Protection-**Fourteenth Amendment**) and diversity of citizenship **28 U.S.C. § 1332**. (See **PC**, pg 1, 09.10.2007). The **PC** pursued a **Fourteenth Amendment** *in rem* action seeking injunctive relief and declaration that the (*in rem*) order issued by Elkhart Superior Court, Northern Indiana, ("state court") is *void ab initio* because it was obtained in procedural violation of Sanjari's constitutional rights, Due Process

Clause of the **Fourteenth Amendment** to the Constitution.

2. On 09.17.2007, Sanjari filed a request to vacate referral to Magistrate Judge.

3. On 10.10.2007, Sanjari had to resort to filing an "EMERGENCY VERIFIED MOTION TO EXPEDITE CONSIDERATION OF THE INSTANT CASE; AND REAFFIRMATION OF REQUEST TO VACATE REFERRAL TO DISTRICT MAGISTRATE".

4. On 10.17.2007 the instant USDC's *sua sponte* ruling (**Exhibit # 1**) was entered in which the Plaintiff's Complaint was misrepresented by the court and dismissed under **28 U.S.C. § 1915(e)(2)(B)(ii)** ("*fails to state a claim on which relief may be granted*;") arrived at on the perplexing basis of **42 U.S.C. § 1983** ("**§ 1983**") even though the Complaint had not been filed on the basis of **§ 1983** at all.

ARGUMENT

5. As a background to the instant action it should be noted that the events resulting in, and as a result of, Gratzol's actions since 2001 include multitude of violations of the Constitution and federal laws by Northern Indiana judiciary some of whom practiced before instant USDC in Northern Indiana. Furthermore, there have previously been actions in the instant USDC against some of the perpetrators, and hence, the court's familiarity with them.

COURT'S JUDGMENT OF DISMISSAL IS IN VIOLATION OF THE US CONSTITUTION, STATUTES AND PERTINENT PRECEDENT AND CONSTITUTES PRACTICE OF LAW FROM THE BENCH

THE USDC IN DISMISSING PLAINTIFF'S ACTION ERRED DUE TO THE FOLLOWING:

I. INSTANT *IN REM* ORDER IS IN PROCEDURAL VIOLATION OF SANJARI'S DUE PROCESS RIGHTS, AND THEREFORE IS *VOID AB INITIO*; FURTHERMORE, *SUA SPONTE* DISMISSAL IS "*DISFAVORED*"

6. Sanjari will herein not individually address the issues in the false chain of reasoning espoused, in its erroneous decision, by the instant USDC in view of the fact that they all rest upon the false foundation of **§ 1983** that the instant USDC has created and presented. Suffice it to state that in view of the *in rem* order by the state court having been obtained in violation of Sanjari's **Due Process** and **Fourteenth Amendment** rights, the said order is unconstitutional and, therefore, *void ab initio.* The relevant arguments ("*VOID* JUDGMNT", **PC**, pg11) have selectively been ignored by the USDC. After all Sanjari specifically sought remedy from this court under federal questions (**Fourteenth Amendment** violation, etc) and diversity (**28 U.S.C. §§ 1331-2**, **PC**, pg1) stating a claim for which there is no discretion that USDC is the proper venue for the instant action and it must take jurisdiction. Sanjari did not base his Complaint on the **§ 1983** pretext (and misleading twists and turns therein) which is merely a phantom creation of the instant court's express determination to dismiss the instant action. Therefore, the court's created **§ 1983** basis must not be relied upon in this action. **§ 1983** is inappropriate and Sanjari did not include any state actor as a party, nor did he state or refer to any **§ 1983** basis. Upon careful reading of Sanjari's Complaint, **Catz v. Chalker**, 142 F.3d 279 (C.A.6 (Ohio) 1998) ("**Catz**") cited therein would have shed light on the matter and the inapplicability of the court's (**§ 1983**) argument, and hence its dismissal. The court deliberately abandoned the obvious (stated basis) in the **PC** and went out of its way

looking for a phantom argument to dismiss the case under.

7. The **PC** is an *in rem* action against the order obtained by Gratzol through procedural violations of Sanjari's constitutional due process rights, i.e. *federal questions* which the judgment goes out of its way to ignore and misrepresent. *In rem*, is an action against the order, not state actors (required by **§ 1983**), or indeed any person. If Sanjari had meant to file a complaint on the basis of **§ 1983** (i.e. against persons and state actors), he'd have included and named state actors as defendants and not filed an *in rem* action. Hence, the court's dismissal is clearly on a non-existent basis (**§ 1983)** under which Sanjari did not file his Complaint. The court can not create a non-existent pretext and use it to dismiss Plaintiff's case just because *"... it* [the Court] *does not like the allegations ..."* **Nietzke v. Williams**, 490 U. S. 319, 324-27 (1989).

8. Once a lawful "avenue" of relief or redress is established, it cannot be denied. **Blackledge v. Perry** 417 U.S. 21, 26 n.4; 94 S.Ct. 2098 at 2101 n.4 (1974). Challenging the constitutionality of the *in rem* order in the USDC on the basis of federal question and diversity is such an "avenue" in the instant case.

9. In **Catz**, somewhat similar to the instant case, the constitutionality of an *in rem* order obtained through procedural violations of Catz's due process rights was challenged by Catz (the husband) who sought and obtained "*a declaration that the state divorce decree was void as a violation of due process* [clause of the **Fourteenth Amendment**]*"*. Catz's action had two parts, first challenging the unconstitutionality of the *in rem* divorce decree order obtained by Chalker in Arizona state court through Catz's due process violation (federal question). Second

part of Catz's action included a **§1983** claim against Chalker and other (Arizona state) actors.

"*The action also alleged violations of the Electronic Communications Act,* ***18 U.S.C. § 2511****, and a number of supplemental claims under state law*." **Catz**.

The District Court in Ohio dismissed Catz's action *sua sponte* on "*grounds of improper venue, and Catz's failure to state a claim*". **Catz** (II). "*We note, to begin with, that to the extent that the district court relied on improper venue as the basis for dismissal* [...], *it was in error. Because venue is personal and waivable, a district court should not raise a venue objection on its own motion,* [...]. ***Stich v. Rehnquist,*** *982 F.2d 88, 89 (2d Cir. 1992)"*.
Catz @ III.A. Emphasis added. (C.f. judgment, **Exihibit # 1**).

Similarly, the instant USDC erred in dismissing Sanjari's case *sua sponte* contrary to **Tingler v. Marshall**, 716 F.2d 1109 (6th Cir. 1983) suggesting Sanjari should have sought remedy in a different venue (Indiana state court).

> *"In* ***Tingler****, we reiterated our view that sua sponte dismissals on the merits are disfavored, and exercised our supervisory power to establish a rule to govern such dismissals by the district courts. We held that a district court faced with a complaint which it believes may be subject to dismissal must:*
> *(1) allow service of the complaint upon the defendant; (2) notify all parties of its intent to dismiss the complaint; (3) give the plaintiff a chance to either amend his complaint or respond to the reasons stated by the district court in its notice of intended sua sponte dismissal; (4) give the defendant a chance to respond or file an answer or motions; and (5) if the claim is dismissed, state its reasons for the dismissal.*
> *716 F.2d at 1112*." **Catz** @ III.B.

10. In **Catz**, while affirming Ohio USDC's dismissal of Catz's **§ 1983** claim (for non-related reasons to the instant case), the CA6 remanded in part in which it agreed with Catz that the *in rem* divorce decree order was indeed *void* because it had been obtained in violation of Catz's due process rights. Catz obtained the requested relief declaring the *in rem* order in his case *void ab initio.*

In the instant case, the issues are even more clear and straight forward as Sanjari did not file any claim on **§ 1983** basis, nor included any parties as state actors. His claim, as clearly stated (**PC**, pg 1), is on the basis of procedural violations of his constitutional and due process, i.e. **Fourteenth Amendment** rights (similar to Catz's such claim). As such, the instant *in rem* order in question is *void* (not voidable) and there is no time limit, nor does any statute of limitations apply to challenging it. **A judgment is *void* if it is not consistent with Due Process of law**. ***Orner v. Shalala***, 30 F.3d 1307, 1308 (1994); ***V.T.A., Inc. v. Airco, Inc.***, 597 F.2d 220, 221 (1979). (**PC**, pg 12).

11. Similarly, the instant court's *sua sponte* dismissal not only violated Sanjari's **Seventh Amendment** rights of access to the courts, but it also violated the Defendant Gratzol's due process rights in having an opportunity to file a response. Unless, as its judgment appears to indicate, the instant USDC has taken upon itself to act on Gratzol's behalf while practicing law from the Bench.

The USDC's judgment failed to recognize that an order/judgment (instant *in rem* order subject of instant *in rem* action) obtained in violation of the due process is unconstitutional and therefore, *void ab initio*. See above. Therefore, the court's reconsideration and reversal of its judgment is urged.

II. THE COURT CAN NOT ENTER INTO "RULE MAKING" AND REPLACE THE STATED BASIS OF THE COMPLAINT WITH ITS OWN CREATION IN ORDER TO DISMISS; THE COURT CAN NOT PRACTICE LAW FROM THE BENCH

12. The USDC, in its determination to dismiss the instant action, has created its

own inapplicable parallel argument and basis (**§ 1983**), where it did not legitimately exist (other than the Plaintiff's stated and proper basis of argument-dueprocess violation), and used its own phantom basis to dismiss. *"Where the rights secured by the Constitution are involved, there can be no rule making [or legislation] which would abrogate them."* **Miranda v. Arizona**, 384 US 436, P 491. The **PC** did not even mention **§ 1983** basis, much less seek any remedy whatsoever pursuant to it. **White v. Bloom**, 621 F.2d 276 states: *A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively*, **Haines v. Kerner**, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), *and take them as true for purposes of deciding whether they state a claim*. **Cruz v. Beto**, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2D 263 (1972). Emphasis added. Even if Sanjari had not stated the basis of his argument as federal questions and constitutional violations coupled with diversity, the court upon reading the **PC** could and should have realized and interpreted the obvious, i.e. that the basis is indeed upon federal questions and procedural violations of constitutional rights along with diversity, hence stating the cause and the resulting injury of deprivation of his due process and other rights and loss of his family life. Yet, in the instant judgment (**Exhibit # 1**) not only the court misrepresented the basis of Sanjari's Complaint, but it seems to similarly go out of its way to create its own parallel and inapplicable phantom argument under which to dismiss. I.e., the court not only must not presume to use its own creation for an argument, but it must take Plaintiff's statements as the basis for its ruling where there is a basis stated by the

Plaintiff (as herein). In **U.S. v. Sanchez**, 88 F.3d 1243 (D.C.Cir. 1996), the court stated: *Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result*. Yet, *en contraire*, the instant USDC appears to go to "particular pains" and against Sanjari's written claim (**PC**, pg 1) to destroy Sanjari's case. '*Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory."* **Bonner v. Circuit Court of St. Louis**, 526 F.2d 1331, 1334 (8th Cir. 1975)' (quoting **Bramlet v. Wilson**, 495 F.2d 714, 716 (8th Cir. 1974)) [Emphasis added]. See SELF-REPRESENTED "*PRO SE*" STANDARD OF REVIEW, **PC**, pg 9. The instant court in its judgment not only failed to carry out the above "duty", but stepped out of bounds of logic and the obvious to create a pretext to dismiss where one did not exist, and ignore Sanjari's legitimate and clearly and obviously stated basis for his Complaint.

> *"Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of* ***White v. Bloom****. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case."*

Also see **Loubser** (self-represented) **v. Thacker**, CA7 (Indiana), March 2006, remanded.

13. The contrast between the instant USDC's judgment and that in **Catz** in which CA6, carrying out its duty and responsibilities faithfully, addressed each pertinent issue in **Catz** on the basis of its individual merit(s), e.g. ruling upon the constitutional issue of due process violation even when accompanied by a **§ 1983** claim, affirming the dismissal of the latter (**§ 1983**) claim while remanding and agreeing with the Plaintiff (Catz) on the former. C.f. with the instant case in which

Sanjari properly based his claim on constitutional grounds without even mentioning any basis upon **§ 1983**. Yet, the instant USDC, in contrast to CA6, looked elsewhere to find a non-existent pretext (**§ 1983**) to dismiss.

14. By misrepresenting the issues (not even addressing the due process violations forming the basis of Sanjari's Complaint, and instead expansively analyze an argument that was not even used as a basis by Sanjari) and dismissing the case based upon its own phantom argument, the court has practiced law from the bench and acted on behalf of the Defendant. This practice from the bench is in violation of **28 USC § 454** which states:

> "*§ 454. Practice of law by justices and judges*
> *Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.*"

and is, along with other aspects of the instant case, actionable in the US Court of Federal Claims ("**The Tucker Act**", **28 U.S.C. § 1491(a)(1)**) and by procedures within the Seventh Circuit (Judicial Council) and elsewhere[1]. Also see **Willis v. Town of Marshall**, N.C., 426 F.3d 251, 261 (4th Cir. 2005) (quoting **United States v. Morison**, 844 F.2d 1057, 1070 (4th Cir. 1988)).

III. THE INSTANT COURT CAN NOT ABANDON ITS OATH OF OFFICE TO UPHOLD THE US CONSTITUTION AND DUTY TO APPLY LAWS AND CONSTITUTION OF UNITED STATES; IT, FURTHERMORE, CAN NOT IGNORE THE US LAWS WHERE THEY APPLY, AND REPLACE THEM WITH INFERIOR STATE LAWS

1 E.g., Committee for the Review of Circuit Council Conduct Orders, the Regional Executive Office of the U.S. Trustees, Administrative Office of the US Courts and Judicial Conference of the United States, etc.

15. Lest it has been forgotten, Plaintiff Sanjari filed his *in rem* action claiming that the *in rem* order in question is *void* due to it having been obtained through procedural violations of Sanjari's constitutional and due process rights and resulting in deprivation of his family life. THIS, WHILE STATING A CLAIM, IS A FEDERAL QUESTION ACTION ALONG WITH DIVERSITY OF CITIZENSHIP AND BELONGS IN FEDERAL COURT WITH JURISDICTION THEREOF. It is not a domestic relations litigation which the instant court has regrettably, inexcusably and deliberately chosen to infer through the back door (Judgment, **Exhibit # 1**, pg 2). After all, Sanjari brought to the attention of instant court the distinction, where an order is obtained through due process violation, using **Catz**, **Marshall v. Marshall**, 126 S. Ct. 1735, 1748 (2006), et al. ("DOMESTIC RELATION EXCEPTION AND ROOKER-FELDMAN DO NOT APPLY", **PC**, pg 24). In order to dismiss the case the court used its own creation and "*rule making*" (**Miranda**), in violation of the Constitution contained in the oath of office, resorted to using Indiana law, as opposed to the relevant, superior, federal law under which the case was filed and merits positive and serious consideration. Such conduct and exercise is more attuned to practice in Indiana State courts and is contrary to the mandate, duties and responsibilities of federal judiciary to uphold the Constitution and laws of the United States. This is abandoning the superior Constitution and laws of the United States in favor of vastly inferior state laws, and it will not help the violative state court[2]. The court in its opinion ignores the

2 It may be noted that already investigations by federal law enforcement agencies, the Judiciary Committees of the US Congress (on the basis of federal funding to state courts, hence not barred by "separation of powers") and other US agencies, have been instigated under Public Corruption and Civil Rights violations to look into Indiana state judiciary's conduct, (including

Constitution, federal laws and multitude of federal precedents regarding the constitutional violations and voidness (not "voidable") of orders (including but not limited to the instant *in rem* order) resulting therefrom and validity of the Plaintiff's case, and follows its own created line of reasoning.

> *"The rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction, for both the state and Federal courts have certain concurrent jurisdiction over such controversies, and when they arise between citizens of different states the Federal jurisdiction may be invoked, and the cause carried to judgment, notwithstanding a state court may also have taken jurisdiction of the same case. In the present case, so far as the record before the circuit court of appeals discloses, the circuit court of the United States had acquired jurisdiction, the issues were made up, and when the state intervened, the Federal court practically turned the case over for determination to the state court. We think it had no authority to do this, and that the circuit court of appeals, upon the record before it, should have issued the writ of mandamus to require the judge of the circuit court of the United States to show cause why he did not proceed to hear and determine the case."* **217 US 268**.

Additional points that further re-enforce the above supporting statement in the instant case are:

i. There is no pendent case regarding this issue in the state court.

ii. Sanjari is not a resident nor citizen of state of Indiana (diversity).

iii. The state case went, over 3.5 years(!), through its course, fraught with multitude of misconduct and violations of Sanjari's due process, access to the courts, and other constitutional rights, in Indiana state courts (3 years waiting for a hearing in a case that was supposed to have "priority", Petition for Transfer to Indiana Supreme Court

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those involved in the plaintiff's case), particularly in Northern Indiana, including those who aid and abet them, or are accessory after the facts and execute their *void* orders.

denied, Petition For Writ of Certiorari to the USSC denied).

The state court and judge thereof long ago lost jurisdiction due to their persistent and continuing violations of Sanjari's Constitutional rights. Also see [3].

16. When the state in this case is one of the perpetrators and violators, there can be (and Sanjari has) no expectation of just, indeed any, relief from it. The state cannot cause a federal violation, and then try to prohibit litigants from seeking redress in the federal courts for those same violations (i.e. the state cannot violate our fundamental rights, and then try to have us dismissed out of federal court, either directly or by proxy, for seeking vindication of those rights) ***' "We have long recognized that a state cannot create a transitory cause of action and at the same time destroy the fight to sue on that transitory cause of action in any court having jurisdiction" Tennessee Coal, Iron & R, Co. v. George****, 233 U.S. 354, 360 (1914)*' cited in **Marshall v. Marshall**, 547 U. S. (2006), USSC 04-1544, 2006, (text available upon request) - *unanimous* USSC ruling (Decided May 1, 2006).

17. Furthermore, in **148 US 529**, the US Supreme Court ("USSC") stated:

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3 If a judge does not fully comply with the Constitution, then his orders are *void*, he/she is without jurisdiction, and he/she has engaged in an act or acts of treason. When judges act when they do not have jurisdiction to act, or they enforce a *void* order, they become trespassers of the law, and are engaged in treason. ***In re Sawyer***, 124 U.S. 200 (1888). Other (in addition to the *in rem* order subject of the instant action) procedural violations of Sanjari's due process rights included having to wait for three (3) years before an Indiana court hearing was held in the state court case. In another instant a secret hearing having been held in Indiana court while no timely service of process was issued to Sanjari (living in Massachusetts) to attend. The state court docket, in spite of having been falsified by the state judge (documentary and audio evidence available), is replete with indications of misconduct and violations of Sanjari's constitutional rights.
However, the loss of jurisdiction of state court judges should not be subject of the instant action as the instant case has already proven itself to properly having stated a valid claim and belonging to the USDC and jurisdiction thereof.

> *'But this court has repeatedly decided that the* ***jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states****, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. In many cases state laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the states, either by legislative enactment or by their own rules.* ***But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction****.* ***Suydam v. Broadnax****, 14 Pet. 67;* ***Bank v. Jolly****, 18 How. 503.' This principle has been steadily adhered to by this court.'*

In **McClellan v. Carland**, 217 U. S. 268, 281, Justice Marshall wrote:

> " *Jurisdiction is determined "by the law of the court's creation and cannot be defeated by the extraterritorial operation of a [state] statute . . . , even though it created the right of action." Ibid. Directly on point, the Court has held that federal-court jurisdiction, "having existed from the beginning of the Federal government, [can] not be impaired by subsequent state legislation creating courts of probate."*

In **Wisconsin Dept. of Corrections v. Schacht**, 524 U.S. 381 (1998), the

USSC reiterated the same principles:

> "***We have suggested that the presence of even one claim "arising under" federal law is sufficient to satisfy the requirement that the case be within the original jurisdiction of the district court*** *for removal . See* ***Chicago v. International College of Surgeons****, 522 U.S. ___, ___ (1997) (slip op., at 7-9).*"

Although the instant action is not a "removal" case, nevertheless the argument for

requirement of the federal court jurisdiction and venue is just as valid herein. Also

see **Maris Friedlander, et al. v. Burton G. Friedlander**, 98-1391 (CA7).

And in **Ankenbrandt v. Richards,** 504 U.S. 689 (1992), USSC clearly explained:

> *"The Barber Court thus did* ***not*** *intend to strip the federal courts of authority to hear cases arising from the domestic relations of persons*

> *unless they seek the granting or modification of a divorce or alimony decree." (emphasis added).* They further added, *"By concluding, as we do, that the domestic relations exception encompasses* ***only*** *cases involving the issuance of a divorce, alimony, or child custody decree, we necessarily find that the Court of Appeals* ***erred*** *by affirming the District Court's invocation of this exception."*

Much the same way that the instant USDC has inappropriately invoked the exception through the back door and without labeling it as such (**Exhibit # 1**, **Judgment**, pg 2). In considering the merits of **Thermtron Products, Inc., v. Hermansdorfer**, 423 U.S. 336 (1976), as in this instant case also claiming federal subject-matter jurisdiction, the USSC further admonished: "*We agree with petitioners: The District Court* ***exceeded its authority*** *in remanding* [to state court] ***on grounds not permitted by the controlling statute***." Much the same way that the instant case can not be dismissed.

18. Although the USSC had held, prior to Marshall's appointment to the Bench, that the Supremacy Clause rendered null and *void* a state constitutional or statutory provision which was inconsistent with a treaty executed by the Federal Government, **Ware v. Hylton**, 3 U.S. (3 Dall.) 199 (1796), it was left for him to develop the full significance of the clause as applied to acts of Congress. By his vigorous opinions in **McCulloch v. State of Maryland et al.** 17 U.S. 316 (1819) and **Gibbons v. Ogden**, 22 U.S. (9 Wheat.) 1 (1824), he gave the principle a vitality which survived a century of vacillation under the doctrine of dual federalism. In the **McCulloch** case, he asserted broadly that "*the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested*

in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared." 17 U.S. (4 Wheat.) 436 (1819). From this he concluded that a state tax upon notes issued by a branch of the Bank of the United States was *void*. I.e. **any order issued in violation of the Constitution, such as the instant *in rem* order, is *void*.**and is adjudged under the federal law.

19. In **Gibbons**, said the Chief Justice:

> "*In argument, however, it has been contended, that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject, and each other, like equal opposing powers. But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of an act, inconsistent with the Constitution, is produced by the declaration, that the Constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do not transcend their powers, but though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution, or some treaty made under the authority of the United States.* ***In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.***" 9 Wheat. (22 U.S.), 210-211 (1824).

Therefore, since the *in rem* order was obtained in violation of the Constitution, it must be adjudged under the laws of the United States (and in a federal court) and not state laws. See the Court's discussion of **Gibbons** in **Douglas v. Seacoast Products**, 431 U.S. 265, 274 -279 (1977).

Even state courts, let alone federal courts, have a duty to give priority to the US Constitution and laws. The Constitution, laws, and treaties of the United States are

as much a part of the law of every State as its own local laws and constitution. Their obligation

> "*is imperative upon the state judges, in their official and not merely in their private capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or Constitution of the State, but according to the laws and treaties of the United States--'the supreme law of the land'*."
> **Martin v. Hunter's Lessee**, 14 U.S. (1 Wheat.) 304, 335 (1816).

Therefore, the instant court can not abandon US laws, which are more appropriate and superior in the instant action anyway, in favor of inferior Indiana laws, which are not even relevant and have been utilized through the court's creation of a phantom basis to dismiss.

20. At this point Chief Justice Marshall will close the argument for requirement of federal court venue and jurisdiction in the instant action:

' *In **Cohens v. Virginia**, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 6 Wheat. 264, 404 (1821).'*

21. The instant USDC, by abdicating its "authority [and] duty in any case in favor of another [Indiana state] jurisdiction" has violated the very authority which created and gave it its position and authority, as well as violating the oath of office.

22. The court's alluding to the jurisdiction (which was not the subject of the plaintiff's instant case) of the state court appears to address arguments not made by the Plaintiff in the instant case, and yet arguments that express the fallacious

sentiments and interests of and give comfort to the state judiciary in protecting themselves (although no one on behalf of the state of Indiana, its officials and judiciary has officially and formally made an appearance in the instant case, and certainly nothing that Plaintiff Sanjari has been provided service of process of, as per requirements of the Constitution and federal laws). This indicates a clear practicing of law from the Bench in the instant case on behalf of the Defendant Gratzol and those who issued the *void* orders. Conflict of interest.

23. The instant USDC's judgment (**Exhibit # 1**) has been issued with the court's knowledge and deliberate intent that its contents consisted of misrepresentations by omission and commission, practicing from the Bench, acting on behalf of the Defendant, conflict of interest, failing duty to uphold the US Constitution, emasculation of the US federal Constitution and authority by inappropriately relinquishing its court's authority to that of a state, especially in view of having sworn to uphold the former. All of which have inappropriately resulted in dismissal of the instant action and in a break down in "good behavior" during holding office. **US Constitution Art III**, **Section 1**; **28 U.S.C. 351** et seq.

24. Sanjari hereby respectfully urges the instant USDC to

i) address and rule upon the case on the stated basis in his Complaint and herein (Due process and **Fourteenth Amendment** violation, diversity, and hence *void* order, ...) and his other filings, and not on the basis of the court's own creation.

ii) refrain from practicing law from the Bench and "rule making" which result in deprivation of Sanjari's access to the courts (**Seventh Amendment** violation) and other rights.

CONCLUSION

25. In conclusion, Sanjari has herein shown, and as also evident from his Complaint (**PC**), that

i. he filed the instant action on the basis of procedural violations of his due process rights (**Fourteenth Amendment**), which is a federal questions issue and, along with diversity of citizenship, a matter for the instant USDC. These are so by the Constitution, statutes and precedent. Therefore, there is no discretion for the USDC to abandon its jurisdiction,venue and authority in favor of any other. Noting that the discussion of state court rules and other trappings therein (**Judgment**, **Exhibit # 1**) were an inappropriate distraction resulting from the inapplicable pretext (**§ 1983**) created by the USDC to dismiss.

ii. As CA6 said in **Catz**, since the issue before the court is that of procedural violation of due process (constitutional) rights, as in the instant case, it is properly a matter for USDC to rule on. As it did and found the *in rem* (a state court divorce decree) order in question having been obtained in violation of Catz's due process rights and declared it *void*. Similarly, the instant *in rem* order (issued by state of Indiana court) obtained in procedural violation of Sanjari's due process rights is unconstitutional and, therefore, *void*.

iii. The misrepresentation of Plaintiff's Complaint and basis thereon, inapplicability of the argument and abandonment of US Constitution and laws in favor of inferior state laws contained in the court's judgment (**Exhibit # 1**) render the said ruling an exercise in practicing law from the Bench.

WHEREFOR Plaintiff Sanjari, *self-represented*, respectfully requests that the instant USDC expeditiously:

A- reconsider and reverse its judgment of 10.17.2007, regarding the Plaintiff's Complaint of 09.10.2007, and similarly proceed with discovery and trial proceedings in the instant matter with a view to providing injunctive relief adjudging and declaring the instant *in rem* order null and *void*,

B- reconsider and reverse its judgment of 10.17.2007, regarding the Plaintiff's motion of 09.10.2007, to proceed In Forma Pauperis,

C- vacate the referral of the instant case to US Magistrate completely,

D- grant all other relief deemed just and proper in the premises.

I affirm under the pains and penalties for perjury that I am aware of the contents herein and that the above and foregoing representations are true to the best of my knowledge.

Respectfully submitted,

Dated: October 26, 2007

Amir H. Sanjari
self-represented, in propria persona

c/o 130 D Old Ferry Road
Haverhill, MA 01830
Ph: (978) 373 1612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an additional copy of the above and foregoing document is mailed to the US District Court (USDC), Northern Indiana on this_26th _day of October, 2007, to be served by the United States Marshall Service (see Plaintiff's Civil Summons and IFP Applications to the said USDC and in view of the fact that the Complaint has not been served to the Defendant yet) upon the following:

Alison Gratzol (Defendant)
Radiation Oncology Unit
Elkhart General Hospital
600 East Boulevard
Elkhart, Indiana 46514.

_____
Amir H. Sanjari
self-represented, in propria persona

c/o 130 D Old Ferry Road
Haverhill, MA 01830
Ph: (978) 373 1612